

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO.7379 OF 2020

KOMAL HIWALE

Petitioner(s)

VERSUS

STATE OF MAHARASHTRA

Respondent(s)

O R D E R

(1) We have heard Mr. Colin Gonsalves, learned senior counsel appearing for the petitioner.

(2) The petitioner who is now pregnant by about 24-25 weeks, had sought permission for foetal reduction of one foetus which is affected with down syndrome.

(3) By order dated 22.05.2020, the High Court had declined to grant permission for foetal reduction. The High Court was of the view that it may not be safe for the mother, and secondly foetal reduction of one foetus, may affect the other normal foetus.

(4) By order dated 10.06.2020, we had directed the same Medical Board to be re-constituted, and submit an additional report on two issues : (i) To give further opinion whether the abortion of one foetus will affect on the life of the petitioner-mother; (ii) Whether the abortion of one foetus will have an effect on the surviving second foetus.

(5) We had further directed that an additional member be included in the Medical Board, who is a specialist in Foetal Medicine. The Medical Board included Dr. Purnima Satoskar, MD, a Full Time Professor, Department of Obstetrics and Gynecology at Seth G.S. Medical College and Head of Unit & Foetal Medicine

Department at Nowrosjee Wadia Maternity Hospital, Mumbai, who has examined the petitioner-Komal Hiwale and has given the following opinion:

"After going through all the reports, I conclude that she has dichorionic diamniotic twin pregnancy. Today she is around 25 weeks pregnant. One foetus is affected with trisomy 21. The other foetus (fetus A) is chromosomally and structurally normal."

(6) Dr. Purnima Satoskar has referred to the Guidance Note for Medical Boards for Terminal of Pregnancy beyond 20 weeks Gestation as recommended by the Ministry of Health and Family Welfare, Government of India, which permits selective foetal reduction and gave her opinion as under:

"Note on trisomy 21 (Down Syndrome)

This is a chromosomal abnormality and has no treatment. The baby will suffer from significant mental retardation, intellectual disability and may also have other health conditions like heart disease etc. in the affected person. Thus, leading to severe limitations on the patient who needs a full-time caregiver and causes mental, logistical and financial challenges to the parents.

It is classified in the list of substantial and serious abnormalities by the MOHFW in its Guidance Note for Medical Boards for Terminal of Pregnancy beyond 20 weeks Gestation."

(7) Dr. Purnima Satoskar, in her conclusion, has opined that there is no direct risk of the procedure to the normal twin and opined as under :

"In dichorionic twins, there is no direct risk of the procedure to normal twin as the circulations of the twins are separate.

The procedure carries negligible risks similar to amniocentesis to mother and is proven extremely safe and large series with no maternal deaths.

After discussing this at length with the mother, she voluntarily came up with selective foetal reduction as her preferred choice after fully understanding the risks and benefits and has submitted a handwritten letter expressing the same.

In conclusion, I find no medical reason not to provide the treatment of foetal reduction converting the twin pregnancy with one twin affected with Down syndrome to singleton pregnancy."

(8) We have gone through the earlier report and also the present report submitted by the Medical Board.

(9) In view of conclusion of the Medical Board, the impugned order of the High Court is set aside and the petitioner-Komal Hiwale is permitted to undergo foetal reduction as per the procedure stated by Dr. Purnima Satoskar. The petitioner-Komal Hiwale as well as her husband shall give their individual consent for selective foetal reduction. A copy of the two affidavits shall be filed before this Court and the same shall form part of the record.

(10) The special leave petition is accordingly disposed of.

.....J.
(R. BANUMATHI)

.....J.
(INDU MALHOTRA)

.....J.
(ANIRUDDHA BOSE)

NEW DELHI,
JUNE 16, 2020.

